IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 1026 OF 2002.

Ramkrishna Tanbaba Charwad
and others. ... Appellants.

Versus.

M/s.Empire Developers and others. ... Respondents.

Shri S.M.Railkar for the Appellants.

None for the Respondents.

CORAM : ABHAY S.OKA, J.

DATED : 16th March, 2007.

P.C.:

1. On the oral prayer made by the Advocate for the Appellants, the Appeal is restored and taken up for hearing immediately.

2. The Appellants are the original Plaintiffs. The Appellants have taken exception to the judgment and order dated 28th September 2002 passed by the trial Court by which the Application for temporary injunction made by the Appellants was rejected.

3. The Appellants filed a suit for declaration that the development agreement dated 16th September 1996 executed by one Smt.Indubai, who is the ancestor of the Appellants and an irrevocable power of attorney executed by her in favour of the 1st and 2nd Respondents are not surviving as the same have been terminated. The prayer made in the application for temporary injunction was

that the 1st to 3rd Respondents be restrained by an order of injunction from creating any third party interests and from carrying out any development work.

4. After having heard the learned Advocate for the Appellants, I find that no case is made out for interference at this stage. After admission of the Appeal, this Court has not granted any ad-interim relief in favour of the Appellants. Thus from 28th September 2002, there is no interim or ad-interim relief operating in favour of the Appellants. As a result the development activities must have been proceeded with. The Appellants are seeking a discretionary and equitable relief of temporary injunction. Considering the facts and circumstances of the case after lapse of four years and more, interim relief cannot be granted. It is, however, obvious that the development work, if any, carried out by the Respondents on the suit property during the pendency of the suit will be subject to the final outcome of the suit.

5. Subject to what is stated above, the Appeal is dismissed. No order as to costs.

6. All contentions of the parties on merits of the suit are expressly kept open.

Judge.